

Before the Board of Zoning Adjustment, D.C.

PUBLIC HEARING - December 10, 1969

Appeal No. 10266-69 Raymond S. Smethurst, Eva H. Bray,  
Maurice W. Fillius, et ux and William  
P. Goud, et ux, appellants.

THE ZONING ADMINISTRATOR OF THE DISTRICT OF COLUMBIA, appellee.

On motion duly made, seconded and unanimously carried,  
the following Order of the Board was entered at the meeting of  
December 16, 1969.

EFFECTIVE DATE OF ORDER - July 24, 1970

ORDERED:

That the appeal for variance from the minimum lot area requirements of the R-1-B District to permit erection of 5 single-family dwellings at the northside of Klinge Street adjoining 5045 Klinge Street, NW., Lots 847,860,848,859,878, Square 1435, be granted.

FINDINGS OF FACT:

1. The subject property is located in an R-1-B District.
2. The property is currently vacant.
3. Appellant proposes to erect five (5) single-family dwellings upon the subject property.
4. The topography of the subject lots from the Klinge Street grade dips approximately five (5) feet and rises again in the rear above the Klinge Street grade. Additionally, the subject property, because of its location, is subjected to severe drainage from the adjoining property.
5. Appellant is able to comply with setback, side yard, and rear yard requirements and seeks a variance from 1.5 to 8.0 percent for each lot.
6. Each proposed lot is to have a fifty-seven (57) foot frontage and a total area of approximately 4,770 square feet. Dwellings shall measure approximately 40 feet by 40 feet and shall be 17 feet apart. The property immediately adjoining on the east contains approximately 4,932.21 square feet in land area.

7. Appellant alleges that there are thirteen (13) lots on the street with frontages between 37 feet and 49.37 feet. There are twelve (12) lots which contain from 3,000 to 4,818 square feet. Directly across the street from the subject lots are three (3) houses on lots containing 4,340 square feet each.

8. Opposition to the granting of this appeal was registered at the public hearing based on the undesirability of subminimal lots and comparable drainage problems on neighboring properties.

9. A request for rehearing was made by the opposition at public hearing January 14, 1970 based on alleged misrepresentations made by the appellant at public hearing December 10, 1969.

10. The Board in executive session January 20, 1970, granted a rehearing of the subject appeal.

11. Upon rehearing of May 13, 1970, appellant moved to incorporate the record of December 10, 1969, into the current proceeding which motion was granted by the Board.

12. The following arguments were entered on behalf of the opposition:

[a] "The granting of variances permitting the construction of five houses on lots zoned for four would have a substantially deleterious financial ecological effect on the neighborhood, and would drastically upset the scheme of the zoning map; and

[b] The lots for which variances are sought are not exceptional topographically nor in shape; the strict application of the Zoning Laws and Regulations would not result in exceptional hardship on the applicants (or Mr. Pardoe); and there are not practical difficulties preventing the development of the lots in question in conformity with zoning requirements."

13. The opposition alleged that misrepresentation was made with respect to the alleged drainage problem. It was further stated that drainage is a characteristic of property which should be considered at the time of purchase. Additionally, it is alleged that the subject property does not contain a drainage pit, but that it at one time was a goldfish pond fed by water from the adjoining property at the request of the previous owner of the subject property upon which the pit is situated.

14. Appellant alleged that there was in fact never a covenant running with the land providing for water to be fed into the alleged pond from a spillway on the adjoining property.

15. The Board in executive session May 19, 1970, with Messrs. Hatton and McIntosh dissenting, affirmed its prior decision of December 16, 1969, granting this subject appeal. The allegations with respect to misrepresentation were not, in the opinion of the Board, substantiated by evidence presented. Additionally, no new evidence was submitted which was not or could not have been reasonably presented at the original hearing.

OPINION:

We are of the opinion that appellant has proven a hardship within the meaning of the variance clause of the Zoning Regulations and that a denial of the requested relief will result in peculiar and exceptional practical difficulties and undue hardship upon the owner.


Further, we hold that the requested relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose and integrity of the zone plan as embodied in the Zoning Regulations and Map.

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BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED:

By: \_\_\_\_\_

  
PATRICK E. KELLY  
Secretary of the Board

THAT THE ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS ONLY UNLESS APPLICATION FOR A BUILDING AND/OR OCCUPANCY PERMIT IS FILED WITH THE DIRECTOR OF INSPECTIONS WITHIN A PERIOD OF SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER.